

CONTRATING AGREEMENT

November 18, 2011

This agreement is executed by Apex Flagpole, a California corporation (hereinafter "Contractor") at 2194 Central Park Drv., Campbell, CA 95008 and Hillcrest Business Association (hereinafter "HBA"), whose address is 3737 Fifth Avenue San Diego, CA 92103, with respect to the following facts:

Recitals

- A. The City of San Diego, though not a party to this agreement is referred to in this agreement as "The City".
- B. Contractor is engaged in the business of providing construction services for flag poles.
- C. HBA desires to have Contractor provide specified services as outlined in Attachment #A.
- D. HBA has engaged with the property owner, The City of San Diego, by permit application to provide construction services outlined in Attachment #A.

The parties hereby enter into the following agreement:

Agreement

Please refer to Attachment # A for Scope of Work.

Fees and Payments

- A. HBA shall pay to Contractor the amount for service rendered pursuant to this agreement, per Attachment # A.

Other Considerations

Term and terminations.

The term of this agreement shall commence at the date of signing and shall conclude on June 30, 3012. Either party may cancel this Agreement at any time after date of signing upon 30 days written notice to the other party. If the provisions of this agreement are not met within the term of the agreement Contractor shall forfeit payment. .

Independent contractor status. Contractor is not an employee of the City or HBA. All staff costs relating to the agreement must be borne by Contractor. Contractor shall have no authority to bind the City or HBA in any manner or to incur any obligation, debt, or liability of any kind, on behalf of or against the City or HBA. Signing this agreement does not assign any rights, obligations, and/or duties of Hillcrest Business Association under this agreement to any third party. This agreement does not create a contractual relationship between the City or HBA and any third party.

It is understood and agreed that by virtue of entering into this agreement, Contractor and/or its employees shall not become employees of HBA. Rather, Contractor shall have the status of an independent Contractor. HBA shall make no deductions of any kind from any consideration paid

Contractor, including but not limited to state, federal and local taxes, social security, etc. HBA shall not be required to secure workers compensation or any other insurance or benefit for Contractor except as may be expressly provided herein. Contractor shall maintain general discretion and control over the manner in which the services required hereunder are performed. Nothing herein shall be construed or interpreted to prohibit Contractor from entering into similar or dissimilar agreements with other parties or entities, provided that Contractor shall devote all time reasonably necessary to fully perform its obligations hereunder.

Materials, supplies and equipment. Contractor shall furnish all materials, supplies and equipment necessary to fully perform the services specified herein.

Authorization. HBA hereby represents and warrants that if not the owner of the Premises, or the HBA is fully authorized by the owner to enter into this agreement.

Supervision. Contractor shall provide supervision adequate to insure that the services rendered pursuant to this agreement are of high quality.

Assignment. HBA or Contractor may not assign any rights or obligations hereunder without the prior, express written consent of both parties. This agreement shall be binding on and inure to the benefit of the successors, assigns and personal representatives of the parties.

No joint venture or partnership. This agreement shall not be construed or interpreted to create or establish any joint venture or partnership between the parties.

Notices. Any notice to a party required or permitted hereunder shall be deemed given on the date of delivery if personally served, or on the third day after mailing if mailed. Any notice by mail shall be first class or airmail, postage prepaid, certified mail (return receipt requested) and sent to the address indicated by the signature of the party on this Agreement, or to the most recent address given the sender by written notice from that party.

Waivers. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or of any other provision.

Entire agreement, amendment. This instrument contains the entire Agreement of the parties, and supersedes any and all prior representations, negotiations, agreements and understandings between them, whether oral or written. This Agreement may not be modified or amended except by written instrument, signed by each party hereto.

Governing law. Contractor shall at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. SubContractor shall also comply with all notices issued by City under the authority of all current or future laws, statutes, ordinances, or regulations. The construction, interpretation and application of this Agreement shall be governed by the law of the State of California.

Force majeure. If performance by Contractor of any of its obligations hereunder is interrupted or delayed by any occurrence not occasioned by the conduct of either party to this agreement, e.g., whether that occurrence is an act of God or public enemy, or whether that occurrence is caused by war, riot, storm, earthquake or other natural forces, or by the acts of anyone not a party to this

agreement, then Contractor shall be excused from any further performance for whatever period of time after the occurrence is reasonably necessary to remedy the effects of that occurrence.

Severability. Should any provision of this Agreement be rendered void, invalid or unenforceable by any court of competent jurisdiction, such invalidity, etc., shall not render void or unenforceable any other provision.

Conflict of interest. Contractor shall comply with all federal, state, and local laws, including conflict of interest laws, statutes, ordinances, regulations, and policies of City related to public contracts and procurement practices to the extent applicable. HBA and Contractor are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. Contractor has been made aware of the HBA's Conflict of Interest policy (Attachment B).

Agreements with third parties

Upon signing, the Contractor shall disclose and provide copies of all agreements with third parties relating to the project including rental agreements, service contracts, entertainment agreements, sponsorships, in-kind donations, special payments, and mutual benefit arrangements. Unwritten agreements shall be unacceptable.

Insurance. Contractor shall defend, indemnify, protect, and hold harmless the City and HBA, their elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property resulting from Contractor work as set forth in this agreement. Contractor shall provide Commercial General Liability [CGL] Insurance, naming HBA and the "The City of San Diego, its elected officials, officers, employees, representatives, and agents" as additionally insured. Contractor shall provide Workers' Compensation Insurance, as required by the laws of the State of California for all of Contractor employees who are subject to this Agreement, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000). "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additionally insured in the CGL. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be delivered to HBA at the execution of this contract. All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements. If City is made a party to any judicial or administrative proceeding to resolve the dispute between HBA and Contractor, Contractor shall defend and indemnify the City as described herein.

Equal employment and nondiscriminatory provisions. Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Contractor activities pursuant to this Agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment. Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Agreement. Contractor is

individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor may be required to comply, and require each of its Sub Contractors to comply, with the provisions of the City's Living Wage Ordinance. It is the responsibility of the Contractor to determine if compliance is required. Contractor is required where applicable to comply with the Americans with Disabilities Act, the City of San Diego Drug Free Workplace requirements, and Storm Water Management and Discharge Control Ordinance.

Arbitration. If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try in good faith to resolve the dispute by mediation administered by the American Arbitration Association under its Rules, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be resolved by arbitration administered by the American Arbitration Association in accordance with its Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof pursuant to applicable law. In any dispute the prevailing party will be entitled to all reasonable costs and attorney's fees.

IN WITNESS WHEREOF, the parties have executed this agreement
on _____, at _____, California.

**HILLCREST BUSINESS
ASSOCIATION**

CONTRACTOR

By:

Benjamin Nicholls
Executive Director
ADDRESS:
3737 Fifth Avenue
San Diego, California 92103
(619) 299-3330 Tel.
(619) 299-4230 Fax

By: _____

Attachment # A Scope of Work

Service Area:

- The median and landscaped area at Normal St. and University Ave. in Hillcrest, San Diego.

Scope of work:

- Provide a 65' aluminum flagpole with winch operated internal halyard with stainless steel cable and all hardware and rigging as specified in attachment C.
- Provide full rigging, flagpole adjustment and finish work and placement of flag.
- Provide all engineering documents, containing foundation and flagpole calculations as required by permitting agencies signed and “wetstamped” by a California licensed engineer.
- Provide crane service to lift and set 65' flagpole.
- Provide a custom solar max nylon 12' x 18' six color LGBT rainbow flag with red bar at top in the 1979 style. Flag to be finished with roped header and special reinforcing.
- Prepare site area for installation of concrete surface and below grade infrastructure including but not limited to re-grading, removing of plant material from concrete area and any other preparation work for install.
- Remove earth and soil (and dispose of as required by local laws) to install required below grade infrastructure.
- Install all formwork and infrastructure below and at grade as required.
- Construct a paved area at the base of the flagpole to the specifications in attachment C.
- Install concrete bollards, recognition monument, and other design details as specified in attachment C.
- Coordinate with HBA, City of San Diego agencies and other contractors as required.
- Remove and dispose of all excess materials from site in accordance with local laws at conclusion of work.
- HBA will provide City of San Diego Site Development Permit and construction permits for the project.

Fee Structure

HBA shall pay Contractor an amount not to exceed \$25,865 for providing the services noted above within the timeline noted above. A 30% deposit shall be made at date of signing with the balance due upon project completion as determined by HBA.

Attachment B: Conflict of Interest policy

No contract may be entered into by the Hillcrest Business Association if one of its' officers, members, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

- (1) the material facts as to the contract or transaction and as to the party's interest are fully disclosed or known to the member, board or committee voting on the matter;
- (2) the contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties;
- (3) the interested party or parties abstains from voting on the matter;
- (4) the contract or transaction is just and reasonable to the Hillcrest Business Association at the time it was authorized, approved or ratified;

- (5) the interested party or parties shall not actively participate in the decision about the contract or transaction, except to answer questions or provide a broad explanation;
- (6) the action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

A violation of any provision of this policy shall be grounds for removal of the officers, directors, members, committee members, staff members or volunteers from their positions with the HBA. A contract or transaction entered into in violation of this Conflict of Interest Policy shall be void and unenforceable.